

In addition, at that time he has the right to a hearing on the question of probable cause. These are broad constitutional rights of great meaning and they will be technically frustrated if the police are permitted to detain for an unnecessary period of time and then profit by the delay. And the bill which is before the committee would result in exactly that. And any protection given insofar as, under rule 5, the right of counsel, which is protected at the present time in the Court of General Sessions and the statute would be broadened by the proposed changes to rule 5 and 44 of the Federal Rules of Criminal Procedure and the only case which would be presented before a magistrate would be a case where they did not have proof of probable cause and the case would have to be dismissed, or a case in which they had obtained probable cause as the result of interrogation which took place during the period of unlawful detention.

The Justice Department presentation with regard to the constitutionality of this proposal was well founded, in my opinion. I don't think the proposal is constitutional on its face. I think it would be constitutional if applied to a situation where the defendant is lawfully arrested, that is, with probable cause and detained for a very short period of time and during that short period of time, voluntarily confesses.

Now, these are rare cases, however. The crying need of the Police Department is for an opportunity to interrogate people whom they suspect of crimes under circumstances where they do not yet have probable cause to believe the defendant has committed the crime. And this statute if applied to that kind of a situation would in my opinion violate the dictates of the Supreme Court in the *Wansung* case.

As I understand that case, it says that if a police officer arrests a defendant without probable cause, any confession which he may obtain as the result of that illegal arrest shall be suppressed not because of the *Mallory* rule but because of the dictates of the fourth amendment and the rules in support of that amendment. And insofar as this statute would attempt to permit these confessions to be admitted in evidence, I think it would be truly contrary to that decision and would be held in violation of the fourth amendment.

The other kind of situation is the case in which there has been a lawful arrest and a prolonged period of detention. If the period of detention is sufficiently long, it may be argued effectively that the causal relation between the illegal arrest and the confession has been dissipated and it would not prohibit the admission of the confession. The problem here is that in all probability the cases would fall under the due process cases including the confession as being "involuntary," and this would leave the statute, if passed, covering only those limited number of cases of lawful arrests and short periods of detention and periods of lengthy detention and confession would be suppressed under the due process cases and cases in which there is a prompt confession following illegal arrests would be suppressed under *Wansung* and in that sense I think the statute is too broad to be constitutional if applied to all cases that the police would like to have it applied to.

Let me say that I do not think the provision of the statute calling for the warning is anything more than a device to give the appearance of a meaningful right and presumably the House is aware of the fact that originally military law contained the very exact provision which